

Chapter-IV Stamp Duty & Registration Fee

4.1 Tax administration

Receipts from Stamp Duty (SD) and Registration Fee (RF) are regulated by the Indian Stamp Act (IS Act), 1899, the Karnataka Stamp Act (KS Act), 1957, the Registration Act, 1908 and the Rules made thereunder. In Karnataka, the levy and collection of SD and RF is administered at the Government level by the Principal Secretary, Revenue Department. The Inspector General of Registration and Commissioner of Stamps (IGR&CS) is the head of the Department of Stamps and Registration who is empowered with the task of superintendence and administration of registration work. There are 34 District Registrar (DR) offices and 248 Sub-Registrar Offices (SRO) in the State.

4.2 Internal audit

The Department stated that though an Internal Audit Cell was constituted in December 2012, it was still not functional (November 2015) due to lack of manpower.

4.3 Results of audit

In 2014-15, test check of the records of 105 units of the Department of Stamps and Registration disclosed non/short levy of SD, and RF and other irregularities amounting to ₹ 14.47 crore in 291 cases, which fall under the categories.

Table 4.1
Results of audit

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Short/non levy of SD and RF due to misclassification of documents	101	4.55
2	Short/non levy of SD and RF due to incorrect application of market value	125	3.88
3	Short/non levy of SD and RF due to suppression of facts	20	0.88
4	Other irregularities	45	5.16
	TOTAL	291	14.47

During the course of the year, the Department accepted short/ non levy of ₹ 7.87 crore in 205 cases. An amount of ₹ 53.26 lakh was also recovered in 23 cases pointed out in earlier years.

A few illustrative cases involving ₹ 3.72 crore are discussed in the following paragraphs. Responsibility may be fixed on the officials concerned for their failure in assessing the correct amount of SD and RF.

4.4 Short levy of SD and RF due to undervaluation

According to Section 3 of the KS Act 1957, SD is levied on instruments chargeable with duty as prescribed under various Articles in the Schedule of the Act *ibid*. Under Article 20, for instruments of conveyance, SD is charged as a percentage of the consideration or of the market value of the property, whichever is higher. Market value guidelines are prescribed for properties situated in the State by the Central Valuation Committee under Section 45-B of the Act. This forms the basis for estimation of market value by the registering officer while registering documents chargeable with stamp duty.

During test check of records of 30¹ SROs between May 2014 and December 2014, Audit noticed 58 cases of undervaluation of properties. The reasons for undervaluation were adoption of incorrect rates of market value guidelines or misclassification of instruments during registration. The resultant short levy of SD and RF worked out to ₹ 1.47 crore and ₹ 0.25 crore respectively.

After these cases were brought to the notice of the IGR&CS between January and May 2015 and referred to the Government during July 2015, ₹ 8.90 lakh was recovered in five cases and in the remaining cases, it was stated that the jurisdictional DRs have been instructed to take action under relevant sections of the Act (November 2015).

4.5 Short levy of SD and RF due to misclassification of document

Section 54 of the Transfer of Property Act, 1882 defines 'sale' as the transfer of ownership in exchange for a price and Section 105 of the same defines 'lease' of immovable property as the transfer of right to enjoy such property, made for a certain time, or in perpetuity, in consideration for a price.

A test check of records in SRO Belagavi revealed that in respect of one document, a converted non-agricultural property measuring 53,633 square feet with roads on two sides, had been leased out originally for 999 years on an annual rent of ₹ 75. Both the lessor and the lessee had died, after which their legal heirs registered a 'deed of transfer consent i.e. absolute sale deed of ground lease hold rights' by which the lessee paid the equivalent of the entire annual rent of ₹ 28,992.75 for the remaining 930 years of the lease and obtained in return the conveyance of 'all the rights, titles and interest' in the property.

Since the recital of the document expressly transferred the title of the property, SD of ₹ 71.36 lakh, as conveyance under Article 20(1) at the rate of 5.6 *per cent* on the market value of the property of ₹ 12.74 crore, is leviable as against the levied amount of ₹ 1,915. Registration Fee of ₹ 12.74 lakh is also leviable, thereby resulting in total short levy of ₹ 84.10 lakh.

After this was brought to the notice of IGR&CS during January 2015 and referred to Government during May 2015, it was stated that the jurisdictional

¹ Attibele, Belagavi, BTM layout, Challakere, Chamarajanagar, Chamarajapete, Channagiri, Chikkodi, Chitradurga, Doddaballapur, Gudibande, Halasur, Hiriyur, Hoskote, J.P.Nagar, Kadur, K.R.Puram, Kushtagi, Maddur, Moodbidri, Nelamangala, Nippani, Peenya, Rajajinagar, Sagar, Sarjapura, Shahapura, Sindhanoor, Sira and Yadgir.

DR, has been instructed to take action under relevant sections of KS Act (November 2015). Further action would be awaited

4.6 Short levy of SD and RF due to escapement of barter consideration

According to Article 20(1) of the Schedule under the KS Act, 1957, SD on conveyance is chargeable on the “market value of the property which is the subject-matter of conveyance”. Market value, as defined under Section 2(1)(mm) of the Act, is “the price which the property would have fetched if sold in open market on the date of execution of the instrument or the consideration stated in the instrument, whichever is higher”.

By way of a sale deed registered in SRO, Banashankari, a residentially converted land measuring two Acres and 35 Guntas was sold for a consideration comprising of ₹ 5.20 crore and an additional, future barter consideration of 35,684 square feet of built-up area, 36 car parking lots and the proportionate undivided interest in the land. As per clause 23 of the sale deed, the parties have mutually agreed that, “apart from the financial sale consideration, the purchaser would also pay a barter consideration of 35,684 square feet of built-up area along with 36 car parks and the proportionate undivided interest in the schedule land or adjoining land”. Thus, SD and RF were leviable on the entire consideration. But the same was charged only on the financial sale consideration. Applying the then prevailing rates as mentioned in the guidelines issued by the Central Valuation Committee for built-up area (₹ 2376 per square feet) and open car parking (₹ 1.15 lakh per car parking), the barter consideration is to be valued at ₹ 8.89 crore. SD and RF on the same, at 5.6 and one *per cent* respectively, works out to ₹ 58.69 lakh as given in **Table 4.2**.

Table 4.2
Short levy of SD & RF

(₹ in lakh)				
Item	Value	SD leviable at 5.6 per cent	RF leviable at one per cent	Total
Built-up area	35684 sq.ft X ₹ 0.02376 = 847.85	47.48	8.48	55.96
Car parking	36 Nos. X ₹ 1.15 = 41.40	2.32	0.41	2.73
				58.69

After this was brought to notice of IGR&CS in January 2015 and referred to Government during May 2015, it was stated that the jurisdictional DR has been instructed to take action under relevant sections of KS Act (November 2015). Further action in the matter would be awaited.

4.7 Short levy of SD and RF due to suppression of facts

Section 28(1) of the KS Act, 1957, stipulates that the consideration (if any) and all other facts and circumstances affecting the amount of duty with which an instrument is chargeable shall be fully and truly set forth therein. Further, under Section 61(a) of the Act, any person, who with intent to defraud the Government, executes any instrument in which all the facts and circumstances

required by Section 28 to be set forth in such instrument are not fully and truly set forth, shall be punishable with fine which may extend to five times the deficient duty thereof.

a. Short levy of SD and RF due to suppression of consideration

On test check of documents in four² SROs, Audit observed that in 11 instruments (absolute sale deeds), actual consideration for which the properties were sold were not truly set forth. In all these cases, 'agreements for sale' registered prior to the sale deeds contained declarations of amounts paid in advance. While registering the sale deeds the amounts received in advance were not considered for levy of SD and RF. Short levy of SD and RF due to this amounted to ₹ 9.37 lakh

b. Short levy of SD due to registration of sale agreements without reference of general power of attorney

According to Article 5(e)(i) and 5(e)(ii) of the Schedule under KS Act, 1957, an agreement for sale is chargeable with SD at the rate of 10 paise for every ₹ 100 of the market value of the property if possession of the property is not delivered. On the other hand, if possession of property is delivered, same duty as a conveyance (five *per cent* of the market value) is chargeable. Further, even if possession is not delivered, if a reference of a power of attorney granted separately by the seller to the purchaser in respect of the same property is made in the agreement, possession of the property is deemed to have been delivered according to Explanation I under the article.

Test check of documents in three³ SROs revealed that along with three 'agreements for sale' without delivery of possession of properties, corresponding powers of attorney were also registered. Hence, possession of the properties should have been deemed to be delivered in the sale agreements, as per explanation quoted above, for levy of SD.

Reference of such powers of attorney was, however, not made in the agreements, resulting in levy of SD at a lower rate than was applicable. Short levy of SD works out to ₹ 28.64 lakh.

Fine under Section 61(a) of KS Act, upto five times the amount pointed out, is also leviable in both sets of observations.

The issue was brought to the notice of the IGR&CS in May 2015 and referred to the Government in July 2015. The Government replied that the jurisdictional DRs had been instructed to take action under relevant sections (November 2015).

4.8 Loss of revenue due to inadmissible adjustment of SD

According to Article 41(eb) of the Schedule under the KS Act, 1957, same SD as a conveyance under Article 20(1) on the market value of the property is leviable on a power of attorney if it authorises the attorney holder to sell immovable property situated in Karnataka State. The duty so paid is adjustable towards duty payable on an agreement for sale or on an instrument of sale or transfer, only if it is "executed between the same parties in respect of the same property".

² Devadurga, Hiriyur, Jamakhandi, and Nelamangala

³ Banashankari, Basavanagudi and Sarjapura

In respect of four documents registered in the SRO, Sarjapura, Audit observed that General Powers of Attorney (GPA) were granted to a person purely in his *personal* capacity. Thereafter, the subsequent sale of the property was to a house building co-operative society represented by the same person in his *official* capacity as President of the co-operative society. SD payable on the sale deed, however, were allowed to be adjusted against SD paid on the respective GPAs. Although the individual is the same, he has represented first in his personal capacity which qualifies him as a GPA holder for that property and in the second case, he has represented in his capacity as ‘President’ of the co-operative society for which the SD paid on GPA should be disallowed against denotation mentioned in the sale deed. Thus, his representations are for two different legal entities (parties). Hence, the condition -“executed between the same parties in respect of the same property”- is not satisfied and therefore SD has to be paid at regular rates. This loss of revenue due to inadmissible adjustment of SD works out to ₹ 18.95 lakh.

Table :4.3
Loss of SD

(₹ in lakh)

Sl. No.	GPA	Sale deed	Sy. No. and extent of land in Adigarakallahalli, Sarjapura Hobli	Parties involved	Amount of SD Adjusted
1	151/ 12-13, dt.30-6-12	1820/13-14, dt.29-7-13	Sy.No.34 - 3 acres	GPA to Shri. Shanker G.Beleri. Sale Deed - in favour of President, Remco (BHEL) HBCS Ltd.	4.50
2	738/11-12, dt.24-12-11	1821/13-14, dt.29-7-13	Sy.No.134 - 4 acres		7.20
3	211/11-12, dt.27-7-11	1822/13-14, dt.29-7-13	Sy.No.43/2 - 1 acres, 5 guntas		4.55
4	251/11-12, dt.2-9-11	1824/13-14, dt.29-7-13	Sy.No.176/2 - 3 acres		2.70
				Total	18.95

The SRO stated, in reply, that the sale deed is also in favour of the person himself and hence the denotation allowed is as per law.

The reply is not acceptable since the Income Tax Permanent Account Number (PAN) of the buyer as given in the sale deed conforms to the format of that belonging to an association of persons (fourth character is an ‘A’) and not an ‘individual’ (where the fourth character should be ‘P’) which proves conclusively that the buyer is the society and not the person. Further, in the sale deed, the GPA holder has signed ‘for’ the society.

After this was brought to the notice of IGR&CS in March 2015 and referred to Government during May 2015, it was stated that the jurisdictional DR has been instructed to take action under relevant sections (November 2015).

